

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**ESA No.32 of 2019 (O&M)
Date of decision:30.05.2019**

Vipan Kumar

... Appellant

Vs.

Kalu Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Bandana Dogra, Advocate
for the appellant.

AMIT RAWAL J.

The present execution second appeal is directed against the orders dated 01.03.2019 and 29.10.2018 of the Additional District Judge, Ferozepur and Civil Judge (Junior Division), Guru Harasahai, respectively, whereby third party objections against the execution of the judgment and decree dated 11.11.2016 in a suit for possession and mesne profits, have been dismissed.

In a civil suit bearing No.635-1/22.11.2013 titled as Kalu Ram Vs. Jai Parkash, sons of Devi Lal, Kalu Ram sought the possession of shops bearing 19 and 20 situated at Balram Market, Guruhar Sahai, Tehsil Guruhar Sahai, District Ferozepur on the premise that the shops were in ownership of Nagar Council, and he was a tenant under the Nagar Council, whereas Jai Parkash, defendant, his real brother under the garb of good political relations wanted to take the possession of the suit property forcibly

and illegally and in conspiracy, registered a false case against the plaintiff and his son. In the meanwhile, the defendant filed the suit for injunction against the plaintiff regarding the shops in question which compelled the plaintiff to file the similar suit against the defendant. Status quo qua possession was ordered by the Court which was well within the knowledge of the defendant but on 2.11.2013, in the midnight taken the forcibly possession of the shops in question which came to the knowledge only on 3.11.2013.

The defendant contested the suit by raising numerous objections and denied the allegations made in the plaint.

On preponderance of the evidence, the trial Court decreed the suit entitling the plaintiff to take the possession of the shops and declined the relief with regard to the mesne profits.

Appellant-Vipin Kumar filed third party objections dated 31.05.2018 (Annexure P-1) alleging that he had been in possession of the shops since 15.12.2011 by admitting that aforementioned shops were let out by the Nagar Council to Kalu, plaintiff whereas shop no.20 was in possession of JD-Jai Parkash as tenant. In all three shops, flour mill was running but initially, it was only in shop nos.19 and 20. The portion of shop no.21 was being used for sitting purposes. As per the family settlement in the year 1990, shops no.19 and 20 fell to the share of JD and machinery lying the shop of the share of decree holder was sold to JD and a receipt dated 08.06.1990 was executed by decree holder in favour of JD. An affidavit dated 15.11.1990 in this regard was also executed. After that, it

was the responsibility of JD to pay the rent to Nagar Council. However in the record of Nagar Council, name of the plaintiff continued to be recorded as tenant. JD on 28.12.2010 had already filed an application for transferring the tenancy in his name and objector was earlier carrying out his business at Jalandhar and could not properly settle his business. JD agreed to transfer possession of shops to appellant alongwith machinery and in this regard executed an affidavit dated 15.12.2011 which was attested from Notary Public at Jalandhar in the presence of Parveen Kumar and one Ahma. Nagar Council did not accept request for substituting the name and therefore, decree was not binding owing to independent rights. Plaintiff did not implead the appellant-third party objector as party.

In the reply, decree-holder stated that it was in collusion with JD and third party objector. The possession had always been of JD and not of objector and throughout the decree holder had been paying the rent. Affidavit dated 15.12.2011 and receipt dated 08.06.1990 were stated to be forged and fabricated documents.

Learned counsel appearing on behalf of the appellant submitted that the Courts below have committed illegality and perversity in dismissing the objections without framing the issues and the objections were required to be adjudicated by framing the issues. The affidavit and receipt of handing over the possession could have been proved through the evidence. The dismissal of the objections in summary manner is not in tandem with the provisions of Order 21 Rule 101 of Code of Civil Procedure. In fact, the rent receipts were deposited in the name of decree holder as the perpetual

requests made to Nagar Council for changing the name had fallen on deaf ears. The decree impugned was result of collusion and fraud played between JD and decree holder. JD had no knowledge of the pendency of the suit. The question regarding title and relationship between landlord and tenant is required to be adjudicated through evidence.

I have heard the learned counsel for the appellant, appraised paper book and of view that there is no force and merit in submissions of Ms. Dogra for the simple reason that if assertions made in the objection petition are found to be correct, *prima facie*, appellant was not prevented to place on record all the documents, i.e. rent receipts, income tax returns or any sale tax returns etc, for, as per the allegation the business carried out in the shops were of flour mill. It appears purely an attempt on behalf of JD to thwart the right of the decree-holder claiming possession of the suit property. Objector is none-else but son of judgment debtor.

It is a common practice amongst the judgment-debtor sometimes to actually create third party rights or introduce a person purportedly to be a third party, though it is a proxy litigation. The present case is of similar kind. It is not necessary for the Court that in every objection petition, issues are required to be framed. The assertion/objection *prima facie* do not reflect *bonafide*. The orders under challenge cannot be said to be suffering from illegality and perversity.

The appeal is also accompanied by an application seeking condonation of delay of 24 days in re-filing of appeal. The explanation given in the application is bereft of the reasoning.

No ground for interference is made out.

The execution second appeal is dismissed on limitation as well as on merits.

(AMIT RAWAL)
JUDGE

May 30, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No